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SUPREME COURT OF THE UNITED STATES

October Term, 1932.

No. 301

LOUIS K. LIGGETT COMPANY,
a Corporation, et al.,

Appellants,

vs.

ERNEST AMOS, as Comptroller of
the State of Florida, et al.,

Appellees.

On Appeal from the Supreme Court of Florida to the Supreme Court of the United States.

JURISDICTIONAL STATEMENT

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Floridian Press, Jacksonville, Fla.

IN THE
SUPREME COURT OF THE UNITED STATES

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JURISDICTIONAL STATEMENT

Statement of Basis on which Appellants Contend That the Supreme Court of the United States Has Jurisdiction to Review on Appeal the Judgment and/or Decree of the Supreme Court of Florida, entered April 4, 1932, affirming the Decree of the Circuit Court in and for Leon County, Florida, Dismissing Appellants' Amended Bill of Complaint, on Motion to Dismiss filed by Appellees. (Rehearing Denied May 19, 1932).

I.

The federal statute believed and relied upon to sustain appellate jurisdiction in said cause is Sec. 344 (a) of Title 28 of the United States Code, which provides:

"A final judgment or decree in any suit in the highest court of a State, in which a decision in the suit could be had, where is drawn in question . . . the validity of a statute of any State, on the ground of it being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error." (Appeal). (Appeal having been substituted for writ of error under section 861 (a) of Title 28 of the United States Code).

II.

The judgment and decree of the Supreme Court of Florida appealed from was entered on the 4th day of April, A. D. 1932, as appears by the opinion of the Supreme Court of Florida (Typewritten Tr. pp. 157 to 197, reported as Louis K. Liggett Co. v. Amos, 141 So. 153 to 171), and as appears by the judgment and/or decree of the Supreme Court of Florida, affirming the lower Court (Tpn. Tr. pp. 198 to 199)—the time for appeal, however, being suspended by the timely filing of Petition for Rehearing, which was denied on May 19, 1932, as appears by Order of the Supreme Court of Florida, immediately following the amended Petition for Rehearing (Tpn. Tr. p. 217, the printed record not being available in time to prepare this statement).

III.

That the application or petition of appellants severally for appeal to the Supreme Court of the United States was presented to the Supreme Court of Florida on the 26th day of July, A. D. 1932, as appears by the typewritten transcript from the Supreme Court of Florida, pp. 218 to 226.

IV.

This was a suit in equity filed in the Circuit Court in and for Leon County, Florida, as a class suit, pursuant to sec. 14, Chap. 14658, Laws of Florida, 1931, reading as follows:

> "Section 14. **Class Suits: Effect Of.** When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

Said suit was filed to test the validity of and to enjoin the enforcement of Chap. 15624, Laws of Florida, 1931, imposing arbitrary, discriminatory and unreasonable license taxes upon appellants severally, for the privilege of conducting retail merchandise stores in the State of Florida, said statute prescribing arbitrarily different rates of taxation per store as between stores located in one county and stores located in different counties of the State of Florida. That in and by appellants' amended bill of complaint it was

and is averred that the said chapter 15624 is invalid as being repugnant to the Constitution of the United States, in that it denies to the appellants the due process of law and equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States, and repugnant to the Commerce Clause of Art. I, sec. 8 of said Constitution; that the decision of the question of whether said statute is invalid as repugnant to the Constitution of the United States was necessary to the determination of said cause, and the Supreme Court of Florida actually decided in favor of the validity of said statute. That the grounds and bases for attack upon said Florida Statute are more particularly set forth in the amended bill of complaint of the appellants Louis K. Liggett Company, a Corporation, Winn & Lovett Grocery Company, a Corporation, and Paxson's Inc. a Corporation (Tpn. Tr. from the Supreme Court of Florida pp. 16 to 103); and set forth in the Petition of Intervention by the appellant, The Nunnally Company, a Corporation (Tpn. Tr. from the Supreme Court of Florida, p. 116); and the Petition of Intervention by appellants Mellville Shoe Corporation, a Corporation, and others (Tpn. Tr. from the Supreme Court of Florida, p. 124) and the Petition of Intervention by appellants Southern Stores Corporation, a Corporation, and others (Tpn. Tr. from the Supreme Court of Florida, p. 137). That the Appellees made a motion to dismiss said bill (Tpn. Tr. from the Supreme Court of Florida, p. 104), and the Circuit Court in and for Leon County, Florida, in which said suit was instituted, entered its final decree holding said Chapter 15624 to be constitutional and valid under the Constitution of the United States, and sustaining the said motion to dismiss, and dismissing

said amended bill, which final decree was affirmed by the final decree of the Supreme Court of Florida entered April 4, 1932, now appealed from; (rehearing having been denied by said order of May 19, 1932). That no question was raised by Appellees as to the jurisdiction of said Circuit Court to grant the injunction prayed for, or as to the right of Appellants to the relief sought, if the said statute is invalid as repugnant to the Constitution of the United States, and the Circuit Court of Leon County, Florida, and the Supreme Court of Florida severally took jurisdiction of said suit and passed on the constitutionality of said statute, and denied relief on the ground that said statute is not invalid as repugnant to the Constitution of the United States, it being conceded by all parties, and the said Courts severally, that if said law is unconstitutional and invalid as repugnant to the Constitution of the United States, the Appellants are entitled to the relief prayed for. All question as to whether the proper remedy had been invoked was set at rest.

First Natl. Bank v. Anderson, 269 U. S. 341,
70 L. ed. 295, 2 h. n.

V.

That the following (among others) points of invalidity of said Chapter 15624, Laws of Florida, 1931, and its administration, were urged by said amended bill for injunction and petitions of intervention, and following each point we cite the authorities believed to sustain the jurisdiction of the Supreme Court of the United States to review the

judgment and/or decree of the Supreme Court of Florida, sustaining the validity of said State statute, and the alleged administration thereof, notwithstanding such asserted invalidity:

Point 1.

Said Amended Bill (Tpn. R. 30) urged that sub-sections 1, 2, 4, 6, 8 and 10, of Section 5 of said Act, as applied to the factual situation set forth in said Amended Bill, create arbitrary and unreasonable discriminations between single store retail merchants and chain or multiple store retail merchants doing business in the same County, contrary to the Due Process Clause, and the Equal Protection of the Laws Clause of the 14th Amendment to the Federal Constitution.

Louisville G. & E. Co. v. Coleman,
277 U. S. 32, 72 L. ed. 270;
Quaker City Cab Co. v. Pennsylvania,
277 U. S. 389, 72 L. ed. 927;
Airway Electric Corporation v. Day,
266 U. S. 71, 69 L. ed. 169;
Louis K. Liggett Co. v. Baldridge,
278 U. S. 105, 72 L. ed. 204;
Smith v. Cahoon, 283 U. S. 553, 75 L. ed. 1264;
New State Ice Co. v. Liebmann,
52 S. Ct. 371, 76 L. ed. (Adv. 479).

Similar constitutional point was made in the Indiana Chain Store Case (283 U. S. 527), but the factual situation

of this case is materially and essentially different; such difference in the factual situation being definitely averred, specified and particularized in said amended bill of complaint.

Point 2.

Said Amended Bill (Tpn. R. 31-32) urged that the several sub-sections 1 to 11, inclusive, of sec. 5 of said Act, quoted in the opinions of the dissenting Justices of the Supreme Court of Florida (141 So. 161), as applied to the factual situation set up in the amended bill, create arbitrary and unreasonable discriminations between retail merchants doing business in only one County of Florida, whether single store merchants or chain store merchants, and retail store merchants, such as appellants severally, doing business in different Counties of the State of Florida, contrary to the Due Process Clause and Equal Protection of the Laws Clause of the 14th Amendment to the Federal Constitution.

Louisville G. & E. Co. v. Coleman,
277 U. S. 32, 72 L. ed. 770;
Quaker City Cab Co. v. Pennsylvania,
277 U. S. 389, 72 L. ed. 927;
Chalker v. Birmingham, Etc. R. Co.,
249 U. S. 522, 63 L. ed. 748;
Bethlehem Motors Corp. v. Flynt,
256 U. S. 421, 65 L. ed. 1029;
Jay Burns Baking Co. v. Bryan,
264 U. S. 504, 68 L. ed. 813;
New State Ice Company v. Liebmann,
52 S. Ct. 371, 76 L. ed. (Adv. 479).

No such discrimination, based on county lines only, was involved in either the Indiana case (283 U. S. 527), or the North Carolina Case (52 S. Ct. 26).

Point 3.

Said Amended Bill (Tpn. R. 32-33) urged that Section 11 of said Act, undertaking to prescribe county and to authorize municipal license taxes for retail merchants affected by said Act, and graduated according to the arbitrary fee basis prescribed in sec. 5 of said Act, violates the Due Process Clause and Equal Protection of the Laws Clause of the 14th Amendment to the Federal Constitution.

Louisville & G. E. Co. v. Coleman,
277 U. S. 32, 72 L. ed. 770;
Quaker City Cab Co. v. Pennsylvania,
277 U. S. 389, 72 L. ed. 927;
Airway Electric Corp. v. Day,
266 U. S. 71, 68 L. ed. 169;
Louis K. Liggett Co. v. Baldridge,
278 U. S. 105, 73 L. ed. 204;
Smith v. Cahoon, 283 U. S. 553, 75 L. ed. 1264;
New State Ice Company v. Liebmann,
52 S. Ct. 371, 76 L. ed. (Adv. 479);

Such prescribed county licenses and authorized municipal licenses create additional arbitrary license taxes as between the owners of one store and of several stores, and as between the owners of stores where the same are located in the same county or in different counties.

Point 4.

Said Amended Bill (Tpn. R. 33-34) urged that the provisions of the last clause of sec. 5, and the provisions of section 11, and section 8 of said Act, as applied to the factual situation set up in said bill of complaint, arbitrarily taxes stocks of merchandise of retail merchants at $3.00 per thousand dollars of merchandise, while stocks of wholesalers are taxed at $1.50 per thousand, and arbitrarily discriminates in such rates of taxation on stocks of merchandise as between wholesalers who have merchandise in warehouses and retailers who have merchandise in warehouses, contrary to the Due Process Clause and Equal Protection of the Laws Clause of the 14th Amendment to the Federal Constitution.

Louisville G. & E. Co. v. Coleman,
277 U. S. 32, 72 L. ed. 770;
Quaker City Cab Co. v. Pennsylvania,
277 U. S. 389, 72 L. ed. 927;
Airway Electric Corp. v. Day,
266 U. S. 71, 69 L. ed. 169;
Louis K. Liggett Co. v. Baldridge,
278 U. S. 105, 73 L. ed. 204;
Smith v. Cahoon, 283 U. S. 553, 75 L. ed. 1264;
New State Ice Co. v. Liebmann,
52 S. Ct. 371, 76 L. ed. (Adv. 479);
Southern R. Co. v. Greene, 216 U. S. 400, 417;
Cotting v. Kansas City Stock Yards Co.,
183 U. S. 79.

This is also an additional discrimination not involved in the Indiana case (283 U. S. 527) or North Carolina case (52 S. Ct. 26).

Point 5.

Said Amended Bill (Tpn. R. 34-35) urged that the proviso contained in sec. 8 of said Act, undertaking to exempt filling stations engaged exclusively in the sale of gasoline and other petroleum products, as applied to the factual situation set up in said amended bill, creates an arbitrary and unreasonable classification and discrimination against all other owners of retail "stores" as defined in said Act, contrary to the Due Process Clause and Equal Protection of the Laws Clause of the 14th Amendment to the Federal Constitution.

Smith v. Cahoon, 283 U. S. 553, 75 L. ed. 1264;
Frost v. Corporation Commission,
278 U. S. 515, 73 L. ed. 483;
New State Ice Company v. Liebmann,
52 S. Ct. 371, 76 L. ed. (Adv. 479);
Williams v. Standard Oil Company,
278 U. S. 235, 73 L. ed. 287.

It is believed that no such point of discrimination was passed on in any Chain Store case previously considered by this Court.

Point 6.

The said Amended Bill, particularly sec. VIII. thereof (Tpn. R. 36 to 40), and sec. XVII. thereof (Tpn. R. 83 to 85), and the several Petitions of Intervention, particularly that part appertaining to the business of The Great Atlantic & Pacific Tea Company (Tpn. R. 129 to 133), show that said Act, particularly secs. 5 and 11 thereof, undertake to seize upon the interstate characteristics and incidents of operating many retail stores in Florida, in connection with the operation of similar retail stores in other States, as a basis for the discriminatory, arbitrary and unreasonable license taxes imposed upon the appellants severally, but not upon single store merchants whose businesses do not have such characteristics enjoyed beyond the limits of the State of Florida, and thereby privileges and rights enjoyed by the appellants severally beyond the State of Florida, and interstate commerce conducted by the appellants severally from other States into and out of the State of Florida, are arbitrarily taxed and burdened, contrary to the Due Process Clause of the 14th Amendment to the Federal Constitution, art. I. sec. 8 of the Federal Constitution; and contrary to art. IV. sec. 2 of the Federal Constitution.

Travis v. Yale & Towne Mfg. Co.,
252 U. S. 60, 65 L. ed. 460;
Shafer v. Farmers Grain Company,
268 U. S. 189, 69 L. ed. 909;
Furst v. Brewster, 282 U. S. 493, 75 L. ed. 478;

Ozark Pipe Line Co. v. Monier,
266 U. S. 555, 69 L. ed. 439;
Sprout v. City of South Bend,
227 U. S. 163, 72 L. ed. 833;
East Ohio Gas Company v. Tax Com. of Ohio,
283 U. S. 465, 75 L. ed. 1171;
Hans Rees' Co. v. Maxwell,
283 U. S. 123, 75 L. ed. 899;
Farmers Loan & Trust Co. v. Minnesota,
289 U. S. 204, 214, 74 L. ed. 371, 376;
Federal Trade Commission v. Pac. States T. P. Assn., 273 U. S. 52, 64, 71 L. ed. 534, 539.

This Point was not raised in the North Carolina case (52 S. Ct. 26), and could not have been raised in the Indiana case (283 U. S. 527), because Jackson's business, all his stores and all "integration" enjoyed in operating the same, existed in the single City of Indianapolis.

Point 7.

Said Amended Bill, particularly Sec. V. (Tpn. R. 23), and latter part of Sec. XI. (Tpn. R. 56), and Sec. XVI. (Tpn. R. 81-82), attack said Act in its entirety as in derogation of the Due Process Clause and Equal Protection of the Laws Clause of the 14th Amendment to the Federal Constitution, and also upon the ground that when the invalid parts aforesaid are eliminated, the remainder will constitute a result not intended by the Legislature, thus rendering the whole Act nugatory.

Williams v. Standard Oil Company,
278 U. S. 235, 73 L. ed. 287;
Smith v. Cahoon, 283 U. S. 553, 75 L. ed. 1264;
Grambling v. Maxwell, 52 Fed. (2) 256.

Point 8.

Said Amended Bill, Secs. XV. and XVI. (Tpn. R. 76 to 82), urged that appellee Comptroller's attempted administration of said Act, undertaking to exempt furniture dealers, filling stations that sell tire and tubes, automobile dealers, cigar stores, restaurants, and sundry other classes of store operators, regardless of whether single store operators or chain store operators, creates arbitrary and unreasonable discriminations against the appellants severally, contrary to the Due Process Clause and Equal Protection of the Laws Clause of the 14th Amendment to the Federal Constitution.

Herkness v. Irion, 278 U. S. 92, 73 L. ed. 198;
Iowa-DesMoines Natl. Bank v. Bennett,
52 S. Ct. 133, 76 L. ed. (Adv. 164);
Yick Wo. v. Hopkins, 118 U. S. 356, 30 L. ed. 220.

Point 9.

That said amended bill sets up facts affirmatively showing that no basis of discrimination or of classifying appellant's stores differently from unit stores exists, and by the allegations of said bill appellants specifically and particularly denied the existence of any facts or grounds

of difference warranting discrimination or different classification as between chain or multiple stores and unit stores; yet the Supreme Court of Florida denied to Appellants the right to show by their evidence that the said Chapter 15624 is arbitrary, unreasonable and discriminatory.

Brinkerhoff-Faris Co. v. Hill,
281 U. S. 673, 74 L. ed. 1107;
Heiner v. Donnan, 52 S. Ct. 358,
76 L. ed. (Adv. 501);
Hovey v. Elliott, 167 U. S. 409, 417, 418, 446;
Manley v. Georgia, 279 U. S. 1, 6;
First Natl. Bank v. Anderson, 269 U. S. 341, 354,
70 L. ed. 295, 305;
Chaselton Corporation v. Sinclair,
264 U. S. 543, 68 L. ed. 841, 844;
United States v. Wilson, 7 Peters, 150, 160;
Arkansas v. Kansas & Texas Coal Company,
183 U. S. 185, 190.

Point 10.

Appellants severally, by their amended Petition for Rehearing (Tpn. R. 216 et seq.) and by their 10th and 16th assignments of error, complained that the majority opinion of the Supreme Court of Florida (Tpn. R. 157, et seq.), 141 So. 153, 158, and decree of affirmance (Tpn. R. 198-199), deprived the Appellants severally of their right to be heard on the factual situation set up in the amended bill, and deprived them of their property without due process of law, and without the equal protection of the laws, contrary to

the 14th Amendment to the Federal Constitution, in that said majority opinion and said decree were predicated upon what the Court assumed to be the factual situation from supposed judicial notice, as against the sworn facts set up in appellants' amended bill, admitted by motion to dismiss, and set up in sworn Petitions of Intervention.

Brinkerhoff-Faris Co. v. Hill,
281 U. S. 673, 74 L. ed. 1107;
Heiner v. Donnan, 52 S. Ct. 358, 76 L. ed. (Adv. 501);
Hovey v. Elliott, 167 U. S. 409, 417, 418, 446;
Manley v. Georgia, 279 U. S. 1, 6;
First Natl. Bank v. Anderson,
269 U. S. 341, 354, 70 L. ed. 295, 305;
Chaselton Corporation v. Sinclair,
264 U. S. 543, 68 L. ed. 841, 844;
United States v. Wilson, 7 Peters 150, 160;
Arkansas v. Kansas & Texas Coal Company,
183 U. S. 185, 190.

VI.

That the Supreme Court of Florida, by its said opinion and decree of affirmance (Tpn. Tr. 198-199) sustained the validity of said Act and said administration thereof in its entirety. That the judgment and/or decree appealed from is the final judgment or decree in said cause; and the Supreme Court of Florida is the highest Court of the State of Florida in which decision in said cause can be had.

That the aforesaid Points were presented in Appellants' petition for allowance of appeal (Tpn. R. 218 to 226), and the aforesaid Points were also presented by the original assignments of error filed July 26, 1932 (Tpn. R. 228 to 232), and again by the amended assignments of error filed August 10, 1932, as of July 26, 1932.

That Appellants now severally submit that said Supreme Court of the United States has jurisdiction of said cause, and that the Appellants are entitled to be heard as of right upon appeal, pursuant to 28 U. S. C. A. sec. 344 (a), and 28 U. S. C. A. sec. 861 (a), as regards the matters covered by the aforesaid Points 1 to 7, inclusive. That said Supreme Court also has jurisdiction to decide the aforesaid Points 8, 9 and 10 upon writ of certiorari (29 USCA § 344 (b)) even if said Points had been presented alone, and when, as here, they are presented in connection with prior Points 1 to 7, inclusive, it is respectfully submitted that said Court upon appeal has jurisdiction to consider and decide all points involved in said cause, including the aforesaid Points 8, 9 and 10.

Respectfully submitted,

ROY M. STERNE,
THOMAS B. ADAMS,
Counsel for Appellants.

Copy of the foregoing Jurisdictional Statement received this 2nd day of September, A. D. 1932.

H. E. CARTER,
Of Counsel for Appellees.